

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

SUSAN M. WYMAN, et al.,

Appellants,

v.

MISSOURI DEPARTMENT OF MENTAL HEALTH, ET AL.,

Respondent.

DOCKET NUMBER WD74062

Date: April 10, 2012

Appeal from:
Callaway County Circuit Court
The Honorable Mary Capshaw Asel, Judge

Appellate Judges:
Division Four: Lisa White Hardwick, C.J., Alok Ahuja, J. and Jon Beetem, Sp. J.

Attorneys:
Thad R. Mulholland, Columbia, MO and Douglas L. Van Camp, Jefferson City, MO, for
appellant.
Joanna Trachtenberg, Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

SUSAN M. WYMAN, et al.

Appellants,

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MISSOURI DEPARTMENT OF MENTAL HEALTH, ET AL.,

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WD74062

Callaway County

Susan Wyman and fifteen other current or former employees at the Fulton State Hospital (collectively “Wyman”) filed suit against the Missouri Department of Mental Health and Marty Martin-Foreman, the Chief Operating Officer of the Hospital. Wyman’s petition alleges that the Department, through the actions of Martin-Foreman, retaliated against the plaintiffs for exercising their rights under the Workers’ Compensation Law, chapter 287, RSMo. The petition sought damages on behalf of each plaintiff, and injunctive relief enjoining the Department from engaging in future retaliation and requiring the Department to restore past victims of retaliation to their prior positions.

The Department and Martin-Foreman moved to dismiss the petition on the basis of sovereign immunity. The trial court granted the motion. Wyman appeals.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED FOR FURTHER PROCEEDINGS.

Division Four holds:

Workers’ compensation retaliation claims, filed under § 287.780, RSMo, are tort claims which implicate the State’s sovereign immunity under § 537.600, RSMo. The Workers’ Compensation Law defines the State and its subdivisions as “employers,” § 287.030, and provides generally that a retaliatory discharge cause of action exists against a worker’s “employer.” § 287.780, RSMo. While the provisions of chapter 287 may suggest that the State’s sovereign immunity is waived, the State and its employees are made subject to the Workers’ Compensation Law by provisions of chapter 105, RSMo. Section 105.850 specifies that “nothing” in the statutory provisions making the State subject to the Act “shall ever be construed as acknowledging or creating any liability in tort.” This provision has been interpreted as preserving the State’s sovereign immunity against retaliatory discharge claims like the ones Wyman asserts here. *King v. Probate Division, Circuit Court of County of St. Louis*, 958 S.W.2d 92, 93 (Mo. App. E.D. 1997); *Krasney v. Curators of the Univ. of Mo.*, 765 S.W.2d 646, 650

(Mo. App. W.D. 1989). The trial court did not err in dismissing Wyman's retaliatory discharge claims against the Department on the basis of sovereign immunity.

The State's sovereign immunity does not apply, at least as a general proposition, to Wyman's separate claim for injunctive relief, however. The sovereign immunity restored by § 537.600, RSMo is plainly intended to prevent the State from incurring tort liability for compensatory damages; it is not applicable to claims for equitable relief. The trial court's dismissal of Wyman's injunction claim is reversed, and remanded for further proceedings.

Finally, Wyman's claim that Martin-Foreman can be individually liable for retaliatory discharge as Wyman's "employer" fails under *Robinson v. Hooker*, 323 S.W.3d 418 (Mo. App. W.D. 2010): Martin-Foreman does not meet the statutory definition of an "employer" found in § 287.030, RSMo, because she does not "have" employees, and does not "us[e] the service of another for pay."

Before: Division Four: Lisa White Hardwick, C.J., Alok Ahuja, J. and Jon Beetem, Sp. J.

Opinion by: Alok Ahuja, Judge

April 10, 2012

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